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5 AL-NAJJAR, NAJAT, MUSTAFA, EVA and
6 NEVEEN.
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9 No. C 05-00024 WHA
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11 Petitioners,

12 v.

13 JOHN ASHCROFT, Attorney General of the
14 United States, TOM RIDGE, Secretary of
15 Homeland Security, NANCY ALCANTAR,
16 et al.,

17 Respondents.
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28 **ORDER DISMISSING HABEAS
CORPUS PETITION AND
VACATING HEARING**

17 Petitioners have a habeas petition pending before the Court. On March 29, 2005, the
18 Board of Immigration Appeals granted petitioners' motion to reopen based on ineffective
19 assistance of counsel and remanded deportation proceedings to the California Executive Office
20 for Immigration Review

21 Given this latest development, this Court determines that it no longer has jurisdiction to
22 conduct any further proceedings despite petitioners' request for the Court to retain jurisdiction.
23 Prudentially, we require a petitioner who argues ineffective assistance of counsel to exhaust his
24 administrative remedies by first presenting the issue to the BIA. *Ontiveros- Lopex v.*
25 *Immigration and Naturalization Service*, 213 F.3d 1121, 1124 (9th Cir. 2000). By the very
26 nature of the claim, the BIA would not have had the opportunity to consider a claim of
27 ineffective assistance of counsel absent a motion to reopen. Therefore, the BIA now will have
28 the opportunity to fully develop the record and consider the claim in light of its agency
expertise.

1 Depending on the result of the BIA proceeding, petitioners may seek an appeal in
2 federal court and seek to relate case to the undersigned.

3 Based on the foregoing, the Court **DISMISSES** petitioner's habeas corpus petition,
4 **VACATES** the hearing scheduled for May 12, 2005, and **ORDERS** the clerk to **CLOSE** the file.

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6 **IT IS SO ORDERED.**

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8 Dated: May 10, 2005.


WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE